REMARKS

The following is structured so as to answer each corresponding item in the Examiner's Detailed Action mailed October 27, 2010.

Priority

The grounds for rejection of the whole list of claims of present application by the Examiner are in essence the same in both the "before final" and "final" office actions. They basically lie in an administrative problem connected to the priority claim of present application 10/009,138 which should have been easily solved long ago by the processing Officer of USPTO.
To makes things clearer, I'd like to draw the Examiner's attention to the following facts:
The applicant has received for present application 10/009,138 a **first filing receipt** mailed January 31, 2003 that said:
"This application is a 371 of PCT/IB97/00887 filed 07/17/1997".

Some fourteen months later (on March 2004), Mr Richard Cole and Mrs Debra S. Brittingham in the PCT Legal Office made the decision of vacating said **first** filing receipt (of 31 January 2003) for reasons explained in their letter dating 16 March 2004. My application 10/009,138 was hence reforwarded to the USPTO's office of processing for new processing in accordance with the decision they made as detailed in their March 16, 2004 letter.

A **second filing receipt** mailed to the applicant on November 30, 2004, stated:

"This application is a DIV of 09/214,039 filed 12/28/1998 ABN which is a 371 of PCT/IB97/00887 filed 07/17/1997".

On said **second** filing receipt (of 11/30/2004), the processing Officer of USPTO neglected to specify that application N° 09/214,039 (filed on 12/28/1998) had been continued (before its abandonment) in a Continuing Prosecution Application (**CPA**) which was filed on 05/02/2001 when 09/214,039 was still pending. For said CPA, the USPTO processing Officer gave a new official application number (= 09/846,362) and a new official filing date (=05/02/2001) while in fact, in that specific case, he shouldn't have changed nor the application number nor the filing date because CPA 09/846,362 was identical to its "parent application" 09/214,039.

It is obvious that the problem I am facing now wouldn't have arisen if the **first** filing receipt mailed January 31, 2003 hadn't been modified as a consequence of its vacation.

To be more specific: Since the CPA doesn't figure on said **second** filing receipt as it should have, and instead, that second filing receipt only states the fact that application 09/214,039 has been abandoned, present Examiner, Mr McEvoy, considers that the chain of pendencies between the prior filed applications and the present one (10/009,138) is not hence respected. Consequently, both the "before final" Office Action dating June 12, 2008 and the "final" Office Action dating October 27, 2010, reject all the claims of present application 10/009,138 just on the grounds of being anticipated by my own original and parent prior filed applications (08/687,315 ; 09/214,039 ; 09/846,362). That, in contradiction to patent rule 35 U.S.C. 121 that says that original and parent applications cannot "be used as a reference either in the Patent Trademark Office or in the courts against divisional application or against the original application or any patent issued on either of them". The Examiner's belief that the applicant should file a petition under 37 CFR 1.78(a) and pay a surcharge (of **1420** USD) under 37 CFR 1.17(t) in order to reinstate his rights doesn't seem to the applicant justified at all for the following reasons:

1) The applicant should not be held responsible for errors made by the processing officer of the USPTO.

2) The whole matter concerning present application was close at hand and nothing was hidden from the USPTO Officer since the beginning of the procedure.

3) Following the before final Office Action dating June 12, 2008, the applicant has amended present application 10/009,138 by adding immediately after the title of the application the following sentences: "This application is a division of US patent application Ser. N. 09/214,039 filed on December 28, 1998, which was assigned the serial N. 09/846,362 in its Continued Prosecution Application (CPA) on May 2, 2001. Said application N. 09/214,039 which is a National stage of International application N. PCT/IB97/00887 filed on July 17, 1997, is also a division of US application N. 08/687,315 filed on July 25, 1996".

4) Application 10/009,138 which has received in USPTO the filing date November 26, 2001 included in addition to the specification on the same date:

a) A declaration claiming the priority of:

***PCT/IB/OO887** filed 17 July 1997 (under Title 35, US Code, §119)

***08/687,315** filed 25 July 1996 (under Title 35, US Code, §120)

***09/846,362** (which is the CPA of 09/214,039) filed 2 May 2001 (also under Title 35, US Code, § 120).

b) A preliminary amendment in which it was clearly indicated in the opening statement of the remarks that present application 10/009,138 was a divisional application of earlier filed applications with the links to the prior filed applications including the fact that application 09/846,362 was a CPA of application N° 09/214,039.

5) The priority item missing (according to the Examiner) in said second filing receipt of present application 10/009,138 concerning the link between application 09/214,039 and application 09/846,362 is clearly stated on the filing receipt of application 09/846,362 under the heading "Domestic Priority Data": **"This application (09/846,362) is a CON of 09/214,039 filed 12/28/1998"**. Also, the same filing receipt of 09/846,362 states the priority under the heading "Foreign Priority Applications": "European Patent Office (EPO) **PCT/IB97/00887**".

6) Present application (10/009,138) is "a non provisional application which entered the national stage after compliance with 35 U.S.C. 371 from an international application **before November 29, 2000**". It is reminded that PCT/IB97/00887 was filed on July 1997. Pursuant to 37 CFR 1.78 (a)(2)(ii)(C), the petition and surcharge evocated by the Examiner are not considered relevant in this case.

7) Present application was filed on November 26, 2001. A **first filing receipt** was mailed only on January 31, 2003 i.e. more than fourteen(!) months after the filing date of the application and much beyond sixteen months from the filing date of the prior filed application. In other words, in such cases in which the first filing receipt is sent to the applicant considerably later than the four months required by 37 CFR 1.78(a), the applicant may inevitably find himself obliged to file a petition and pay a very

expensive surcharge -even if he has correctly completed the priority claim- just because of a default of processing by the USPTO Officer. That is obviously absurd.

Claims Rejections – 35 USC § 102

Claims 56-77 were rejected under this item as being anticipated by Toledano (US 5,855,312).

US application N. 5,855,312 –as discussed in the applicant's above mentioned letter dated September 01, 2008 and also hereabove under the "priority" item- **is a parent prior application to the current one** and cannot therefore be used against its "daughter"(the present application). Indeed, pursuant to **35 U.S.C.121**, original and parent applications cannot **"be used as a reference either in the Patent Trademark Office or in the courts against divisional application or against the original application or any patent issued on either of them"**. This ground for rejection cannot therefore be used by the Examiner in present case.

Response to Arguments

The Examiner claims under this paragraph in his detailed office action that the "arguments" given by the applicant in the above mentioned letter (of September 2008) are not persuasive. The applicant finds it regrettable since said letter lists solely **facts** about the file history.

Under the same paragraph, the Examiner indicates that "Priority to application 09/846,362 was not properly claimed", and that is erroneous. Therefore, the applicant is joining to present response a copy of the declaration sent with the specification on November 2001, in which the priority to 09/846,362 is unequivocally claimed.

In view of the discussion hereabove, the applicant considers regrettable the fact that all the benefits of present RCE have been wasted on an administrative problem, caused by the USPTO processing Officer – a problem that shouldn't have occurred in the first place.

The applicant respectfully solicits the Examiner to reconsult the whole "REMARKS" chapter in applicant's previous letter dated September 01, 2008 in which the applicant summarizes the file history and already demonstrates that the chain of pendencies has never been interrupted in present file.

Applicant hopes for a prompt solution to the administrative problem encountered and earnestly and respectfully solicits a prompt notice of allowance for present application.

Respectfully Submitted

Haviv Toledano (Applicant/Inventor)

Date: December 24, 2010